IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re **Stanley Williams,** On Habeas Corpus.	**CAPITAL CASE** S139526

Los Angeles County Superior Court No. A194636
The Honorable Edward A. Hinz, Jr., Judge

RESPONDENT'S OPPOSITION TO APPLICATION FOR EMERGENCY STAY OF EXECUTION OF SENTENCE OF DEATH

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

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PRELIMINARY STATEMENT

Petitioner Stanley Williams is scheduled to be executed on Tuesday December 13, 2005. Just after 5:00 p.m. on Saturday December 10, 2005, approximately 55 hours before his scheduled execution, petitioner filed a *fifth* petition for writ of habeas corpus in this Court, along with an "application for emergency stay of execution of sentence of death." For the reasons explained in respondent's informal response to the habeas petition, filed concurrently herewith, petitioner widely misses the mark in attempting to establish a prima facie case for habeas corpus relief at this late date. Assessment of petitioner's claims, all of which are derived directly from the claims advanced and rejected in petitioner's recent motion for post-judgment discovery, does not require a stay, and petitioner does *not* argue for a stay on that basis. Instead of making a plea for a stay based on the merits of his own case, which he cannot do, petitioner resorts to the contention that a stay is necessary because of the possibility that the state Legislature may in the future attempt to impose a moratorium on capital punishment in California. Petitioner's contingency-filled proposition does not entitle him to a stay.

ARGUMENT

PETITIONER'S STAY REQUEST IS WITHOUT MERIT AND IS MANIFESTLY DESIGNED FOR DELAY

As this Court has warned, "[p]etitioners should not assume that an eleventh-hour petition, even one claiming actual innocence, will automatically lead to an order staying execution of judgment . . . . Deliberate delay for the purpose of obtaining a last-minute stay is an abuse of the writ which may, inevitably, raise questions regarding the petitioner's good faith and/or veracity." (*In re Clark* (1993) 5 Cal.4th 750, 798-799.) In this case, it is difficult to interpret petitioner's stay request as anything but an eleventh-hour, transparent effort merely to delay his impending execution, rather than a genuine attempt to resolve the merits of bona fide legal issues.

Petitioner's prolonged state and federal habeas corpus odyssey began more than 20 years ago, with the filing of his first habeas corpus petition in this Court in June 1984. In April 1988, following a five-day evidentiary hearing, the petition was denied. Petitioner then filed a second petition in this Court, which was summarily denied in January 1989. Shortly thereafter, petitioner filed a petition for writ of habeas corpus in federal district court. The federal habeas proceedings were stayed pending petitioner's efforts to exhaust state court remedies. Returning once again to this Court, petitioner filed a third habeas corpus petition in September 1989. A second evidentiary hearing was held, this one lasting approximately two weeks. In April 1994, this Court denied the petition. And in June 1995, this Court denied, in a one-paragraph order, petitioner's fourth state habeas corpus petition.

Proceeding back to federal court, petitioner filed an amended habeas corpus petition in the United States District Court in November 1995. The district court denied most of petitioner's claims via summary judgment but ordered yet another evidentiary hearing to explore several of petitioner's claims.

Williams v. Calderon, 48 F.Supp.2d 979 (1998). In March 1998, following the evidentiary hearing, the district court denied petitioner's amended petition. *Williams v. Calderon*, 41 F.Supp.2d 1043 (1998). In November 1999, petitioner filed a motion for relief from judgment pursuant to Federal Rules of Civil Procedure, Rule 60(b). The district court denied the motion in December 1999. In September 2004, the Ninth Circuit affirmed the denial of petitioner's amended habeas corpus petition and rejected his appeal from the denial of the Rule 60(b) motion. *Williams v. Woodford*, 384 F.3d 567 (2004). The United States Supreme Court denied certiorari on October 11, 2005. *Williams v. Brown*, 126 S.Ct. 419 (2005).

Given this history, it can hardly be disputed that petitioner has had more than an adequate opportunity to raise the present claims long before the eve of his execution. Indeed, petitioner makes no effort to explain – either in his habeas corpus petition or in his stay application – why the present claims could not have been raised before the Saturday night two days prior to his scheduled execution, and no explanation is apparent. What is clear is that petitioner's claims, as detailed in respondent's concurrently filed informal response, are readily disposed of, as they are all derived from his recently filed motion for post judgment discovery and are plainly without merit. (See *People v. Shorts* (1948) 32 Cal.2d 502, 505 [no stay as of right; applicant must show "substantial merit" to claims].)

Equally meritless, moreover, is petitioner's stated reason for his stay request – that the Legislature could, in the future, declare a moratorium on executions. This is in effect a request for a permanent stay because, of course, there will always be the possibility of a change in the law that could benefit petitioner. But the potential for, or even the actuality of, a future change in the law, does not render application of current law improper or unfair. (See *Sperry & Hutchinson Co. v. Rhodes* (1911) 220 U.S. 502, 505 [31 S.Ct. 490, 55 L.Ed.561] ["the 14th Amendment does not forbid statutes and statutory

changes to have a beginning, and thus to discriminate between the rights of an earlier and later time"].) To the contrary, courts are bound, for obvious reasons, including equitable ones, to apply current law.

And even on its own terms, the change in law petitioner points to as imminent is, in fact, no more than raw speculation. Assembly Bill 1121, as petitioner acknowledges, is simply set to be *considered*. It is no more than a proposed law, with no assurance, much less any substantial likelihood, that it will pass both houses of the Legislature and be signed into law by the Governor. Even then, petitioner's reliance on this bill assumes its lawfulness. Moreover, Senate Resolution 44, establishing the California Commission on the Fair Administration of Justice, also pointed to by petitioner, makes no mention of any moratorium on capital punishment. The resolution instead only directs that the commission review the administration of criminal justice as whole, one part of which includes capital punishment, and make any recommendations for improvement. (Sen. Res. No. 44 (2003-2004 Reg. Sess.).) A stay cannot properly be premised on such speculation unrelated to particularized circumstances. Rather, petitioner's plea for a stay must be made on the basis of his own case. This he cannot do, and has not even attempted.

As Justice Kennard has aptly observed, death row inmates, "unlike other prisoners, have not yet begun to 'serve' their sentence of death. Although a successful habeas petition by an incarcerated capital defendant may produce immediate benefits in the form of release from prison, retrial, or reduction of sentence, a court's final rejection of all habeas issues generally removes the last judicial barrier to execution. Because courts may grant stays of execution during the pendency of habeas corpus proceedings, prisoners facing a death sentence may seek to prolong their lives by ensuring that such proceedings are never finally concluded. Thus, death row inmates have an incentive to delay assertion of habeas corpus claims that is not shared by other prisoners." (*In re Clark, supra*, 5 Cal.4th at p. 806 (conc. & dis. opn. of

Kennard, J.).) That incentive is manifest here. There simply can be no explanation for a stay request so late in the day, other than a delay for its own sake. Because there is no justification for further delay in effecting the final judgment in this case, which has been repeatedly affirmed over the course of two decades, the stay request must be denied.

Dated: December 11, 2005

Respectfully submitted,

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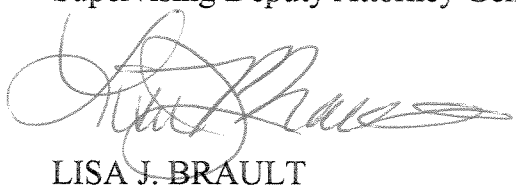

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CERTIFICATE OF COMPLIANCE

I certify that the attached **Respondent's Opposition to Application For Emergency Stay of Execution of Sentence of Death** uses a 13 point Times New Roman font and contains **1,601** words.

Dated: December 11, 2005

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

LISA J. BRAULT
Deputy Attorney General

Attorneys for Respondent

DECLARATION OF SERVICE BY FACSIMILE, ELECTRONIC MAIL, AND REGULAR MAIL

Case Name: ***In re Stanley Williams on Habeas Corpus***
Number: **S139526**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service on December 12, 2005, in the ordinary course of business. My facsimile machine telephone number is (213) 897-2263.

On December 11, 2005, I served the attached Respondent's Opposition to Application for Emergency Stay of Execution of Sentence of Death by sending a PDF copy by electronic mail and transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2008. The facsimile machine I used complied with Rule 2003, and no error was reported by the machine. Pursuant to rule 2008(e)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

Verna Wefald
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65 North Raymond Avenue, Suite 320
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I also caused ten (10) copies of the attached to be delivered to the California Supreme Court at 350 McAllister Street, San Francisco, CA 94102, by Personal Delivery and a courtesy copy to be mailed to the California Appellate Project, Attn.: Michael Millman, 101 Second Street, Suite 600, San Francisco, CA 94105-3672.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 11, 2005, at Los Angeles, California.

Virginia Gow
Declarant

Virginia Gow
Signature

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